

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF ELECTRIC ENERGY, INC.)	
FOR A CERTIFICATE OF CONVENIENCE AND)	CASE NO.
NECESSITY TO CONSTRUCT A POWER)	89-232
TRANSMISSION)	

O R D E R

On August 18, 1989, Electric Energy, Inc. ("Electric Energy") applied for a Certificate of Public Convenience and Necessity to construct a power transmission line from near Joppa, Illinois, to the United States Department of Energy Paducah Gaseous Diffusion Plant ("DOE-PGDP") in McCracken County, Kentucky. DOE-PGDP is Electric Energy's only customer. Electric Energy's application was filed pursuant to KRS 278.020 and this case opened thereupon. The Commission opines, however, that it does not have jurisdiction over Electric Energy, that Electric Energy does not have to apply for a Certificate of Public Convenience and Necessity to construct the line, and that this case should be closed.

KRS 278.010 defines what persons come under the Commission's jurisdiction. Only a "utility" can be made to comport with the Commission's statutes and regulations. The Commission finds that Electric Energy is not a utility because it does not generate, produce, transmit, or distribute electricity to or for the public. The weight of the case law from across the country persuades this Commission that Electric Energy, by serving only DOE-PGDP, is not

providing electric service to or for the public. "One offers service to the 'public' . . . when he holds himself out as willing to serve all who apply up to the capacity of his facilities." North Carolina ex rel. Utilities Comm'n v. Carolina Tel. and Tel. Co., 148 S.E.2d 100, 109 (N.C. 1966). Clearly, Electric Energy does not open its service in that way. Electric Energy serves only DOE-PGDP, having been created in the 1950s for that sole purpose. In 1972 the legislature mandated a division of the Commonwealth into certified territories wherein a single electric provider would serve the needs of the public. Electric Energy neither requested nor was allotted a certified territory conceding the general provision of electricity to other electric providers. Now, no matter how practical electric service for Electric Energy would be, members of the public must look to the provider who claimed the territory Electric Energy did not want. Electric Energy can serve DOE-PGDP because it already was serving the facility when the area was allotted to an electric provider pursuant to statute. No one else, however, can receive service from Electric Energy.


IT IS THEREFORE ORDERED that:

1. Electric Energy is not a utility as that word currently is interpreted by the Commission.
2. Electric Energy is not required to apply for a Certificate of Public Convenience and Necessity to construct a power transmission line in Kentucky to the DOE-PGDP.


3. This case shall be and hereby is dismissed.

Done at Frankfort, Kentucky, this 1st day of November, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director